IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 73-1869

PETER H. BEER, ET AL,

Appellants,

versus

UNITED STATES OF AMERICA, ET AL,

and

JOHNNY JACKSON, JR., ET AL,

Appellees.

MOTION TO DISMISS APPEAL
FOR FAILURE TO PROSECUTE

Pursuant to the Rules of this Court, appellees Johnny Jackson, Jr., et al, hereby respectfully move this Court to dismiss the appeal herein on grounds that appellants have failed to prosecute the appeal by timely filing their brief. As of the date of this writing, January 7, 1975, appellants have still not filed their brief on the merits. The undersigned counsel for Johnny Jackson, Jr., et al, Stanley A. Halpin, Jr., contacted by telephone Michael Rodak, Jr., Clerk of this Court on January 7, 1975, and Mr. Rodak stated that appellants' brief had not yet been filed in spite of repeated pleadings from his office to appellants' counsel. Mr. Rodak further informed undersigned counsel that appellants had neither sought nor obtained an extension of time within which to file their brief.

Not only is appellants' failure to timely file their brief a violation of this Court's Rules, for which sanctions should be imposed, but also the failure of appellants to timely file their brief will cause a delay in this appeal which will have serious

substantive effects because of the peculiar circumstances of this case. Specifically, although the Council of the City of New Orleans should have stood for election in the latter part of 1973, no elections have been held for City Council, and the previously elected City Councilmen are now holding over in office pending the outcome of this appeal. In a parallel case, Johnny Jackson, Jr., et al v. Council of the City of New Orleans, et al, C.A. No. 73-1862 "D", U.S.D.C., E.D. La., a District Court in New Orleans having appointed a Special Master to devise a racially fair plan of redistricting for the Council, held its proceedings in abeyance pending the outcome of this present appeal.

While your movers have no special insight into the motivations of appellants in failing to timely file their brief with this Court, they can say with certainty that delays in this appeal will benefit the incumbent Councilmen in that the longer this appeal is delayed, the longer they will be able to remain in office without facing an election.

WHEREFORE, considering the failure of appellants to file their brief on the merits, which was due November 29, 1974, appellees Johnny Jackson, Jr., et al respectfully urge this Court to dismiss the appeal and/or to bring to bear upon appellants other sanctions appropriate under the circumstances.

Respectfully submitted,

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CERTIFICATE

I, Stanley A. Halpin, Jr., one of the attorneys for Johnny Jackson, Jr., et al, appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 8th day of January, 1975, I served copies of the foregoing Motion to Dismiss Appeal for Failure to Prosecute upon the parties hereto by mailing a copy by first class mail, postage prepaid, to the following:

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